

6/18/94

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EPA
FIFRA
DOCKET

Attachment A
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)
)
Brooker Chemical Corporation) FIFRA DATA Docket No. 203
)
Petitioner.)
_____)

ACCELERATED DECISION AND ORDER

WHEREAS, Petitioner and Respondent in the above captioned case have entered into a settlement which they consider a fair and adequate resolution of the matters involved in this case; and

WHEREAS, the parties have filed a Joint Motion for Accelerated Decision and Order, and

WHEREAS, I find and determine that said Settlement Agreement between the parties represents a just, fair, and equitable resolution of the issues raised in this case;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

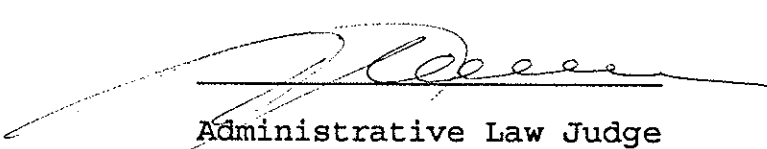
1. The Joint Motion for an Accelerated Decision and Order under 40 CFR Section 164.91 (a) (8) is hereby granted.

2. The terms and conditions set out in the attached Settlement Agreement are hereby approved and incorporated into this Order by reference and made applicable to Respondent and Petitioner. In addition to the other terms and conditions in the Settlement Agreement, it is specifically ordered that the draft suspension order (Attachment I to the Settlement Agreement) should be entered should the Agency notify the Administrative Law

Judge that any of the circumstances outlined in paragraph 6 of the Settlement Agreement have occurred.

Dated

January 18, 1994


Administrative Law Judge

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Brooker Chemical Corporation

Petitioner

FIFRA DATA DOCKET NO. 203

SETTLEMENT AGREEMENT

This Settlement Agreement incorporates the agreement reached between the United States Environmental Protection Agency ("EPA") and Brooker Chemical Corporation ("Brooker" or "Petitioner") in the above-referenced proceeding. The proceeding was instituted pursuant to sections 3(c)(2)(B) and 4 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. Section 136 et seq., following issuance by EPA on October 8, 1993, of a Notice of Intent to Suspend (NOITS) covering Petitioner's product containing Indole-3-Butyric Acid (IBA) (EPA Registration No. 8281-1,2,3,4,5,6,7). The basis for the NOITS was Brooker's failure to provide data required by a Phase 5 Reregistration Eligibility Document Data Call-In Notice issued pursuant to section 4(g)(2)(b) and section 3(c)(2)(b) of FIFRA. Brooker filed a request for hearing on November 16, 1993.

EPA and Petitioner have engaged in negotiations following the inception of these proceedings. These negotiations have produced a settlement of the issues which gave rise to the

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proceeding. This Settlement Agreement relates only to the data requirements which served as the basis for issuance by EPA of the NOITS referred to above. The undersigned parties, the United States Environmental Protection Agency and Petitioner, have agreed to settle this matter and hereby stipulate and agree as follows:

1. Petitioner shall submit the following studies on or before the due dates designated below:

<u>Study</u>	<u>Guideline</u>	<u>Due Date</u>
Product Chemistry	151B-10 through 151B-17	4/20/94
Acute Toxicity	152B-10 through 152B-16	4/20/94

2. Petitioner shall complete and submit the following forms by 4/20/94:

Confidential Statement of Formula (CSF) Form
Certification Form: Data Citation
Certification Form: Offer to Cost Share
Certification Form: Data Compensation

3. All requirements of the original Data Call-In Notice applicable to the individual data requirements and any requirements incorporated into the Data Call-In Notice by reference, including but not limited to references to PR Notices, regulations and/or Agency testing guidelines, must be fully satisfied.

4. Any data submitted pursuant to Paragraphs 1 or 2 shall be deemed to be submitted on the date that the document arrives at EPA unless the data is submitted by certified mail. If submitted by certified mail, the data shall be deemed to be

AB

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submitted on the date that the envelope bearing the document is postmarked.

5. If Brooker submits the data required under Paragraphs 1 and 2 by April 15, 1994, and EPA determines that the data is not acceptable, EPA will notify Brooker in writing of any such deficiencies and will provide Brooker a period of 30 days from the date of receipt of the notice to remedy such deficiencies.

6. Petitioner agrees to entry by the Administrative Law Judge (ALJ) of an immediately effective order of suspension of Petitioner's IBA product, upon notification to the Administrative Law Judge by EPA that Petitioner has not provided, in the time frame specified in Paragraphs 1, 2, or 5 above, the data required by Paragraphs 1 and 2 above. A copy of an order drafted for use by the Administrative Law Judge is attached to this Settlement Agreement as Attachment I. Petitioner agrees that it will not challenge or appeal in any administrative or judicial forum in any manner whatsoever the entry by the Administrative Law Judge of any such suspension order or enforcement of any such order by the Agency.

7. Petitioner acknowledges that it understands that the product registration will be suspended if the Agency determines that any requirement pertaining to data generation and/or submission specified or imposed pursuant to this Settlement Agreement has not been fully complied with, that any deadline specified by or imposed pursuant to this Settlement Agreement has not been satisfied, or that any data submitted pursuant to this



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Settlement Agreement does not fully comply with Agency requirements.

8. In the event suspension occurs as a result of the operation of Paragraph 6 above, Petitioner shall not, within any state (as that term is defined in FIFRA section 2 (aa)), use any affected IBA product, nor shall petitioner distribute or sell (as that term is defined in FIFRA section 2 (gg)) (or cause to be distributed or sold) to any person any IBA product subject to the suspension.

If Petitioner later submits studies which previously served as the basis for any suspension order, EPA agrees to determine, within 30 days of receipt, whether the study was conducted in accordance with required test standards by conducting a preliminary screen of the submission. If EPA finds the study passes this preliminary screen, it will lift the suspension.

9. Petitioner agrees that, for the purposes of FIFRA sections 12, 13 and 14, its failure to comply with any of the terms or conditions of this Settlement Agreement or any suspension occurring pursuant to it, as determined by the Agency in its discretion, shall constitute a violation of FIFRA.

10. Nothing in this agreement shall preclude EPA from determining at a later date, as a result of a more extensive review of submitted data, that all or any portion of a study is scientifically invalid or fails to comply with specified guidelines, and therefore must be replaced, repeated, or

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supplemented with additional data or studies, or that such submission may be basis for issuance of a new NOITS.

11. Unless otherwise provided herein, all information required by the Settlement Agreement shall be submitted by mail to EPA at the following address:

Office of Pesticide Programs
OPP Mailroom (7505G)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Attn: Cynthia Giles-Parker, PM 22
Fungicide-Herbicide Branch (7505C)

Submissions may also be hand-delivered to:

Document Receiving Desk
Second Floor
Crystal Mall Two
1921 Jefferson Davis Highway
Arlington, Virginia

A copy of the cover letter accompanying any submission shall be sent to:

Office of Compliance Monitoring
Laboratory Data Integrity Assurance
Division (7203)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

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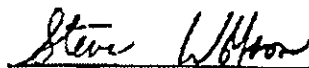
and

Office of General Counsel (2333R)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Attn: Steven Wolfson or Julie Bloch

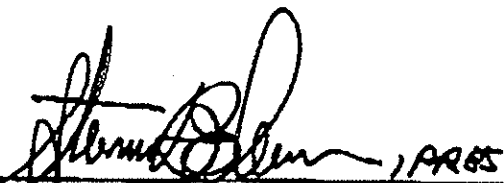
EPA will send any correspondence with Brooker regarding this
Settlement Agreement to: Steven Brooker, President
Brooker Chemical Corporation
P.O. Box 9335
N. Hollywood, CA 91352

SIGNED BY:



Steven Wolfson
Julie Bloch
Office of General Counsel (2333R)
Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Counsel for Respondent



Steven Brooker, President
Brooker Chemical Corporation
P.O. Box 9335
N. Hollywood, CA 91352

CERTIFICATE OF SERVICE

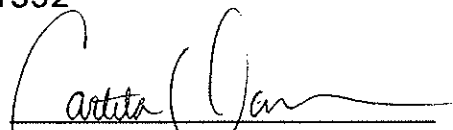
I do hereby certify that the foregoing Accelerated Decision and Order was filed in re Brooker Chemical Corporation; FIFRA DATA Docket No. 203 and exact copies of the same were mailed to the following:

(Interoffice)

Steven Wolfson, Esq.
Julie Bloch, Esq.
Office of General Counsel (2333R)
Pesticides & Toxics Division
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

(1st Class Mail)

Mr. Steven A. Brooker, President
Brooker Chemical Corporation
11240 Sherman Way
Sun Valley, CA 91352

A handwritten signature in cursive script, appearing to read "Carlita M. Davis", is written over a horizontal line.

Carlita M. Davis, Legal Clerk
U.S. Environmental Protection Agency
401 M. Street, S.W. (1900)
Washington, D.C. 20460

Dated: January 19, 1994